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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/015,616	01/29/1998	JEAN NORVELL	FA/141A	5936

7590

09/08/2004

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/015,616	Applicant(s) NORVELL ET AL.	
	Examiner Cheryl Juska	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2004.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-26, 35, 37-43, 49 and 51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26, 35, 37-43, 49, and 51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-20, 22026, 35, 37-40, 49, and 51 stand rejected under 35 USC 103(a) as being unpatentable over US 5,026,591 issued to Henn et al. in view of EP 445 394 issued to Lumb, as set forth in section 2 of the last Office Action.
3. Claims 21 and 41-43 stand rejected under 35 USC 103(a) as being unpatentable over the cited Henn and Lumb references as applied to claim 1 above, and in further view of US 5,376,441 issued to Wu et al., as set forth in section 3 of the last Office Action.

### ***Response to Arguments***

4. Applicant does not amend the claims, but merely presents arguments against the rejections of the last Office Action. Applicant's arguments have been fully considered but they are not persuasive.
5. Applicant traverses the prior art rejection by arguing that Lumb teaches away from the present invention in that the reference mentions that flocked polyolefin films are not suitable for apparel (Response, page 2, 2<sup>nd</sup> paragraph). In response, it is argued that Lumb is relied upon to teach suitable methods of flocking, rather than the specific substrate. A teaching that one particular flocked substrate is not suitable for apparel does not teach away one skilled in the art from employing an electrostatic flocking method to flock articles according to Henn.

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6. Additionally, applicant argues Lumb mentions one possible method of flocking is an electrostatic means (Response, page 2, 2<sup>nd</sup> paragraph). Actually, Lumb teaches two methods of flocking. The first method is by mechanical means, which is the method employed by Henn, while the second, and preferred, method is electrostatic means. Thus, Henn teaches both methods are known, but prefers an electrostatic method. Thus, the above rejection is maintained in that it would have been obvious to one skilled in the art employ an art recognized and preferred method of flocking.

7. With respect to applicant's traversal of the examiner's reliance upon *In re Spada*, 15 USPQ2d 1655 (Response, paragraph spanning pages 2-3), *Spada* may be directed to an anticipation rejection, but the facts are also applicable to 103 rejection. Specifically, the statement that "like materials cannot have mutually exclusive properties" is a matter of fact. This fact is independent of a prior art rejection, 102 or 103. As such, a product of the prior art, whether by anticipation or by obviousness, that is structurally and chemically equivalent to an application product must have like physical properties. The burden is upon applicant to prove otherwise.

8. With respect to applicant's statement that the examiner's position of relying upon *Spada* for a 103 rejection leads one to the result that virtually nothing is patentable even when surprising results are obtained (Response, page 3, 1st paragraph), the examiner respectfully disagrees. Again, equivalent products cannot have mutually exclusive properties. This is a fact of nature. Reliance upon this fact in a 103 rejection does not preclude all things from being patentable. In particular, such a 103 rejection may be overcome by a showing of unexpected results. The key here is that the results must not be expected by one skilled in the art. In the

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present case, applicant has not shown that the claimed wear test cycles would not be expected by one skilled in the art when the Henn reference is modified with an electrostatic flocking process. For example, one skilled in the art would expect an increase in wear test cycles upon electrostatic flocking since said process produces a dense, upright fiber surface, which would provide abrasion resistance. Therefore, applicant's arguments are unpersuasive and the above rejections are maintained.

### ***Conclusion***

9. This is an RCE of applicant's earlier Application No. 09/015,616. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CHERYL A. JUSKA  
PRIMARY EXAMINER